

(1987) 01 MAD CK 0038
In the Madras High Court

Mohammad Farook and Others		APPELLANT
	Vs	
The State of Tamil Nadu and Another		RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 9

Citation : (1987) 100 LW 1078 : (1987) 2 MLJ 282

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—A village known as Pavadai Thope was notified and taken over as an existing inam estate under the Madras Inams

Estates (Abolition and Conversion into Ryotwari) Act 26 of 1963 (hereinafter referred to as the Act) with effect from 2.4.1971. Suo motu enquiry

under the provisions of the Act was initiated by the Assistant Settlement Officer, Tanjore. The village had been given as Abisheka Kattalai inam to

Arulmigu Thiagarajaswamy Devasthanam, Tiruvarur. The dispute in these proceedings relates to four different items of properties. The first item is

of an extent of 9,279 sq.ft., comprised in Town Survey Nos. 644, 645 part and 646 part. The second item is of an extent of 200 sq.ft. forming

part of T.S. No. 646 part and used as a passage for the first item and the third item. The third item is of an extent of 1,337 sq.ft., comprised in

T.S. Nos. 645 part and 646 part. The fourth item is of an extent of 454 sq.ft., comprised in T.S. No. 746/1. In the first item, there is a

superstructure admittedly belonging to one Rajagopalan who is the appellant in S.T.A. No. 34 of 1980. In the third and fourth items also, there are

superstructures which admittedly belong to the appellants in S.T.A. Nos. 11 of

1979 and 12 of 1979. The site over which the buildings exist as also the vacant site passage was claimed by the Abisheka Kattalai who are the appellants in S.T.A. Nos. 105/79, 106/79 and 107/79 as the private land belonging to the Kattalai and in respect of which they are entitled to a ryotwari patta u/s 9 of the Act. It is not necessary to deal with the various proceedings in this regard except to state that the Inam Abolition Tribunal held that the buildings standing in Items 1, 3 and 4 vested respectively in the appellants in S.T.A. No. 34 of 1980, S.T.A. Nos. 11 of 1979 and 12 of 1979 and the site in all these cases vested with the Government. In addition, the Tribunal also held that there is a canopy in the 200 ft., passage and that also belonged to the appellants in S.T.A. No. 11 of 1979. Aggrieved by the order that the site in all these cases vested in the Government, the Abisheka Kattalai have preferred the appeals S.T.A. Nos. 105 of 1979, 106 of 1979 and 107 of 1979. The owners of the superstructures also being aggrieved have filed S.T.A. Nos. 34 of 1980 and 11 of 1979 and 12 of 1979.

2. The first question that arises for consideration in all these Special Tribunal Appeals, therefore, is as to the nature of the land on which the superstructures are built. It was the case of the Abisheka Kattalai that they are private lands in respect of which the Kattalai is entitled to a ryotwari patta. It is - the case of the owners of the superstructures that they are not private lands. Section 65 of the Act provides that when in any proceeding under the Act it becomes necessary to determine whether any land is a ryoti land or a private land, it shall be presumed until the contrary is proved that such land is a ryoti land. The burden is, therefore, on the Abisheka Kattalai to prove that it is a private land, the presumption being otherwise. The learned Counsel for the appellant Abisheka Kattalai relied on Ex. R5 which purports to be a lease deed executed by the Devasthanam in favour of the predecessor of the appellants in S.T.A. Nos. 11 of 1979 and 12 of 1979. That document does not in any way help the learned Counsel as it described the property dealt with thereunder as land and does not describe it as either dry or wet. On the other hand, the boundaries are described as either houses or house sites. The document further recites that the site was given to the lessee for the purpose of constructing a house and a cattle shed and to enjoy the same with a

right to raise suitable crops. In the context in which this right to raise suitable crops is given and the extent covered by the grant, there could be no doubt that the suitable crops are something like kitchen garden and not of any type of agriculture. This document Ex. R5 is of the year 1881. The subsequent documents, on the other hand, clearly establish that as per the recitals in those "documents houses were built on the various sites and they were in the enjoyment of the appellants in S.T.A. Nos. 11 of 1979 and 12 of 1979 and 34 of 1980 and their predecessors in title. In the circumstances, therefore, we are unable to agree with the learned Counsel for the Kattalai that the lands are private lands of the Kattalai in respect of which they are entitled to a ryotwari patta. That leaves us to the question as to whether the appellants in the other appeals are entitled to a patta u/s 15 of the Act and if so in respect of what portions. The lands being not the private lands belonging to the Abisheka Kattalai or the Inamdar and the case of the persons in possession being that they are ryoti lands in respect of which they are entitled to a ryotwari patta under Sections 10 and 11 of the Act, they are lands which vest in the Government u/s 3(b) of the Act. Since there are buildings in Items 1, 3 and 4 and a canopy in Item 2, the question will have to be considered with reference to the rights of such owners of the superstructure. u/s 15(4) of the Act every building other than a building referred to in Sub-sections (1), (2) and (3) shall, with effect on and from the notified date, vest in the person who owned it immediately before that date subject to the payment of levy of such appropriate assessment provided therein. Therefore, even after the notification, the appellants in these cases continue to own the superstructure in their own right. A Division Bench of this Court, in the decision reported in *Silambani Sri Chidambara Vinayagar Swami Devasthanam Devakkottai and Others Vs. Duraisami Nadar and Others*, , considering a similar provision as that contained in Section 15 under the earlier Act (Madras Act 26 of 1948) held that unless the person owns the site in which the building is put up, he will not be entitled to a patta under that provision but the site will have to be dealt with as land vested in the Government for appropriate relief u/s 19 of that Act corresponding to Sections 16 and 17 of the Tamil Nadu Act 26 of 1963. In the circumstances, therefore, we have only to make a declaration that the buildings in

item 1 is vested in the appellant in S.T.A. No. 34 of 1980 and the buildings in Items 2 and 3 are vested in the appellants in S.T.A. No. 11 of 1979

and the building in Item 4 is vested in the appellants in S.T.A. No. 12 of 1979. It should also be made clear that item 2 shall be kept as a common

passage for Items 1 and 3 though a canopy constructed by the appellants in S.T.A. No. 11 of 1979 is existing there. The Government shall deal

with the question of assignment of the lands. It is represented by the learned Counsel for the appellant in S.T.A. No. 34 of 1980 that subsequent to

the decision of the Tribunal, the Government, in fact, have assigned the land on which the superstructure stands in Item 1 in favour of that appellant.

We have no doubt that similar orders will be issued in respect of items 3 and 4 also in favour of the appellants in S.T.A. Nos. 11 of 1979 and 12

of 1979 respectively as they would normally be entitled to such an assignment, they being the owners of the superstructures built long before the

notification and taking over under valid leases of the land from the Inamdar. This declaration should suffice for the disposal of the Special Tribunal

Appeals. Accordingly S.T.A. Nos. 105 of 1979, 106 of 1979 and 107 of 1979 are dismissed. There will be an order of declaration as stated

above in S.T.A. Nos. 11 of 1979 and 12 of 1979 and 34 of 1980. However, there will be no order as to costs.

3. Second Appeal No. 1997 of 1978 : This appeal arises out of a suit in O.S. No. 459 of 1972 on the file of the District Munsif, Tiruvarur, filed by

the respondents for possession of Item 1 referred to above. In view of the fact that this is one of the properties which are vested in the

Government on and from the date of notification and taking over under the Act, the plaintiffs will not be entitled to the recovery of possession of

the property from the defendant. We have already held that the property is vested in the Government and we have also declared the rights of the

parties in respect of the same in the Special Tribunal Appeals. In view of the judgment in the Special Tribunal Appeals, the judgments and decrees

of the Courts below are set aside and the suit is dismissed so far as the decree for possession is concerned. However, the respondents will be

entitled to the rent upto the date of taking over of the estate on 2.4.1971. The judgment and decree of the trial Court is modified accordingly.

There will be no order as to costs in this second appeal also.